Vijayarao a/l Sepermaniam v Suruhanjaya Perkhidmatan Awam Malaysia

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 01–37–08 OF 2017 (P)
AHMAD MAAROP CJ (MALAYA), HASAN LAH, RAMLY ALI, AZAHAR MOHAMED AND ZAHARAH IBRAHIM FCJJ
16 AUGUST 2018

Administrative Law — Certiorari — Dismissal — Appellant dismissed from public service by respondent — Appellant filed judicial review application to quash respondent's decision — Whether appellant had constitutional right to appeal to Appeal Board against decision of respondent under art 144(5B)(ii) of the Federal Constitution ('the Constitution') — Whether in view of art 132(1)(c) of the Constitution, appellant ought not to be dismissed from public service without being given reasonable opportunity of being heard — Whether appellant ought to be given right to oral hearing — Whether appellant, upon his request, ought to be given documents related to subject matters of charges — Federal Constitution arts 132(1)(c) & 144(5B)(ii) — Public Officers (Conduct and Discipline) Regulations 1993 regs 4(2)(d), (g), (i) & 37 — Public Services and Disciplinary Board Regulation 1993 regs 5(1) & 14

The appellant was an investigating officer (Gred P44) of the Malaysian Anti-Corruption Commission ('MACC'). The respondent which was the Public Services Commission of Malaysia ('the PSC') had instituted disciplinary proceedings against the appellant under reg 37 of the Public Officers (Conduct and Discipline) Regulations 1993 (PU(A) 395) ('the POCD Regulations') for allegedly committed disciplinary offences. Briefly, the essence of the charges against the appellant related to the issues of irresponsibility and insubordination under reg 4(2)(g) and (i) of the POCD Regulations; and a conduct that would bring the public service into disrepute under reg 4(2)(d) of the same Regulations. Vide a show-cause letter, the appellant was required to make representation in writing to the PSC stating the grounds on which he wished to rely to exculpate himself on the charges against him. In reply, the appellant requested for relevant documents that formed the subject matter of the charges against him to be supplied to him; and that he be accorded an oral hearing to enable him to make appropriate representations on each charge. Nevertheless, the said requests were not entertained by the PSC. Subsequently, the appellant was notified by the PSC that after considering all the documents and the representations made by him, he was found guilty on all the charges and consequently he was dismissed from service. It was also stated in the said letter that the decision of the PSC was final. Dissatisfied with the decision, the appellant had filed a judicial review application for an order of certiorari to

quash the decision of the PSC and to declare that his dismissal from the public service was unlawful, unconstitutional, void and inoperative and that an account be taken of the salary and emoluments due to him from the date of such wrongful dismissal. The appellant's application was dismissed by the High Court. On appeal, the Court of Appeal had dismissed the appellant's appeal and affirmed the decision of the High Court, hence, the present appeal. The issues for court's determination were: (a) whether the appellant had the constitutional right to appeal to the Appeal Board against the decision of the PSC under art 144(5B)(ii) of the Federal Constitution ('the Constitution') ('the first question'); and (b) whether in view of art 132(1)(c) of the Constitution, the appellant ought not to be dismissed from public service without being given a reasonable opportunity of being heard which includes the right to appeal as provided by art 144(5B)(ii) of the Constitution and reg 14 of the Public Services and Disciplinary Board Regulation 1993 ('the PSDB Regulations') ('the second question').

Held, allowing the appeal with costs here and below; and setting aside the orders of the courts below:

(1) The court answered the first question in the negative in that the appellant was not entitled to nor had any right to appeal to the Appeal Board against the decision of the PSC in dismissing him from service. The Appeal Board had no jurisdiction or powers to deal with disciplinary proceedings involving an officer, such as the appellant, who was in the managerial and professional group. Based on reg 5(1) of the PSDB Regulations, such jurisdiction and power could only be exercised by the PSC. If the appellant was aggrieved with the decision of the PSC in dismissing him, his avenue was to file the necessary application for judicial review at the High Court as what had been done in the present case (see paras 38, 42–43 & 90).

(2) The laws as currently adopted by the courts was more inclined in favour of affording a right to be heard orally to an officer facing disciplinary proceedings if there was request made by him to the disciplinary authority. In addition, it was an established law that the officer concerned ought to be supplied with the documents which were relied upon by the disciplinary authority in the proceedings against him where the officer had requested for the documents. In the present case, with regard to the second question, the appellant ought to have been given an oral hearing and related documents and reports as requested by him in his written representation, to enable him to make an effective and meaningful defense. However, the appellant was denied of his requests in the present case (see paras 79, 82, 84, 89 & 91).

[Bahasa Malaysia summary

Perayu adalah pegawai penyasat (Gred P44) Suruhanjaya Pencegahan Rasuah Malaysia ('SPRM'). Responden yang merupakan Suruhanjaya Perkhidmatan Awam Malaysia ('SPAM') telah memulakan prosiding tatatertib terhadap perayu di bawah peraturan 37 Peraturan-Peraturan Penjawat-Penjawat Awam (Kelakuan dan Tatatertib) 1993 (PU(A) 395) ('Peraturan PPKT') kerana dikatakan telah melakukan kesalahan-kesalahan tatatertib. Secara ringkas, intipati pertuduhan terhadap perayu adalah berkaitan isu-isu tentang sikap tidak bertanggungjawab dan ingkar di bawah peraturan 4(2)(g) dan (i) Peraturan PPKT; dan suatu kelakuan yang menjejaskan perkhidmatan awam di bawah Peraturan PPKT. Melalui surat tunjuk sebab, perayu dikehendaki membuat representasi secara bertulis kepada SPAM dengan menyatakan alasan-aasan yang dia ingin bergantung kepada untuk menyatakan yang dia tidak bersalah atas pertuduhan-pertuduhan terhadapnya. Dalam jawapannya, perayu memohon untuk dibekalkannya kepadanya dokumen-dokumen relevan yang membentuk hal perkara pertuduhan-pertuduhan terhadapnya; dan bahawa dia diberikan perbicaraan secara lisan bagi membolehkannya membuat representasi-representasi yang bersesuaian untuk setiap pertuduhan. Walau apa pun, permohonan-permohonan tersebut tidak dilayan oleh SPAM. Berikutan itu, perayu telah diberitahu oleh SPAM bahawa selepas dipertimbangkan semua dokumen dan representasi yang dibuat olehnya, dia didapati bersalah atas kesemua pertuduhan dan akibatnya dia dipecat daripada perkhidmatan. Ia juga dinyatakan dalam surat tersebut bahawa keputusan SPAM adalah muktamad. Berasa tidak puas hati dengan keputusan tersebut, perayu telah memfailkan permohonan semakan kehakiman untuk perintah certiorari bagi membatalkan keputusan SPAM dan untuk mengisytiharkan bahawa pemecatannya daripada perkhidmatan awam adalah menyalahi undang-undang, tidak berperlembagaan, tidak sah dan tidak berkuat kuasa dan dipertimbangkan berhubung gaji dan emolumen yang kena dibayar kepadanya dari tarikh pemecatan salah itu. Permohonan perayu ditolak oleh Mahkamah Tinggi. Atas rayuan, Mahkamah Rayuan telah menolak rayuan perayu dan mengesahkan keputusan Mahkamah Tinggi, justeru, rayuan ini. Isu-isu untuk ditentukan oleh mahkamah adalah: (a) sama ada perayu mempunyai hak perlembagaan untuk membuat rayuan kepada Lembaga Rayuan terhadap keputusan SPAM di bawah perkara 144(5B)(ii) Perlembagaan Persekutuan ('Perlembagaan') ('persoalan pertama'); dan (b) sama ada berdasarkan perkara 132(1)(c) Perlembagaan, perayu tidak patut dipecat daripada perkhidmatan awam tanpa diberi peluang yang munasabah untuk didengar yang mana termasuklah hak untuk merayu sebagaimana yang diperuntukkan oleh perkara 144(5B)(ii) Perlembagaan dan peraturan 14 Peraturan Perkhidmatan Awam dan Lembaga Tatatertib 1993 ('Peraturan PPALT') ('persoalan kedua').

Diputuskan, membenarkan rayuan dengan kos di sini dan di bawah; dan

mengetepikan perintah-perintah mahkamah-mahkamah bawahan:

(1) Mahkamah menjawab soalan pertama dengan negatif kerana perayu tidak berhak atau tidak mempunyai hak untuk merayu kepada Lembaga Rayuan terhadap keputusan SPAM dalam menolaknya daripada perkhidmatan. Lembaga Rayuan tidak mempunyai bidang kuasa atau kuasa untuk menangani prosiding tatatertib yang melibatkan seseorang pegawai, seperti perayu, yang berada dalam Kumpulan Pengurusan dan Profesional. Berdasarkan peraturan 5(1) Peraturan-Peraturan PPALT, bidang kuasa dan kuasa sedemikian hanya boleh dijalankan oleh SPAM. Jika perayu terkilan dengan keputusan SPAM dalam menolaknya, jalannya adalah memfailkan permohonan yang diperlukan untuk semakan kehakiman di Mahkamah Tinggi seperti yang telah dilakukan dalam kes ini (lihat perenggan 38, 42–43 & 90).

(2) Undang-undang yang kini diguna pakai oleh mahkamah lebih cenderung memihak kepada hak untuk didengar secara lisan kepada pegawai yang menghadapi prosiding tatatertib jika terdapat permohonan yang dibuat olehnya kepada pihak berkuasa tatatertib. Di samping itu, adalah undang-undang yang ditetapkan bahawa pegawai yang berkenaan harus dibekalkan dengan dokumen-dokumen yang mana pihak berkuasa tatatertib bergantung kepada dalam prosiding terhadapnya di mana pegawai itu telah memohon dokumen-dokumen tersebut. Dalam kes ini, berkenaan dengan persoalan kedua, perayu sepatutnya diberikan perbicaraan secara lisan dan dokumen-dokumen dan laporan-laporan berkaitan sepertimana yang dipohon olehnya dalam representasi bertulisnya, bagi membolehkannya membuat pembelaan yang berkesan dan bermakna. Walau bagaimanapun, permohonan-permohonan perayu telah ditolak dalam kes ini (lihat perenggan 79, 82, 84, 89 & 91).]

Notes

For a case on dismissal, see 1(1) *Mallal's Digest* (5th Ed, 2017 Reissue) para 21

Cases referred to

Ang Seng Wan v Suruhanjaya Polis Di Raja Malaysia & Anor [2002] 2 MLJ 131, CA (refd)

B Surinder Singh Kanda v The Government of the Federation of Malaya [1962] 1 MLJ 169, PC (refd)

Chai Kok Choi v Ketua Polis Negara & Ors [2008] 1 MLJ 725, FC (refd)

Ghazi bin Mohd Sawi v Mohd Haniff bin Omar, Ketua Polis Negara, Malaysia & Anor [1994] 2 MLJ 114; [1994] 2 CLJ 333, SC (refd)

Gnanasekaran a/l Krishnasamy v Suruhanjaya Perkhidmatan Awam, Malaysia & Anor [2010] 6 MLJ 441; [2011] 2 AMR 765, FC (refd)

Kerajaan Malaysia & Ors v Tay Chai Huat [2012] 3 MLJ 149; [2012] 3 CLJ 577, FC (refd)

A *Ketua Pengarah Kastam v Ho Kwan Seng* [1977] 2 MLJ 152; [1975] 1 LNS 72, FC (refd)
Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v Utra Badi a/l K Perumal [2001] 2 MLJ 417; [2001] 2 CLJ 525, FC (refd)
Mat Ghaffar bin Baba v Ketua Polis Negara & Anor [2008] 2 MLJ 1; [2008] 1
B CLJ 773, CA (consd)
Mohd Zulhazi Mohd Zulkafli v Suruhanjaya Pasukan Polis Diraja Malaysia & Anor [2015] 2 MLJ 88, CA (refd)
Najar Singh v Government of Malaysia & Anor [1974] 1 MLJ 138, FC (refd)
Nordin Hj Zakaria (Timbalan Ketua Polis Kelantan) & Anor v Mohd Noor
C *Abdullah* [2011] MLJU 760; [2004] 2 CLJ 777, FC (refd)
Public Services Commission Malaysia & Anor v Vickneswary a/p RM Santhivelu (substituting M Senthivelu a/l R Marimuthu, deceased) [2008] 6 MLJ 1; [2008] 6 CLJ 573, FC (refd)
D *R v Immigration Appeal Tribunal, ex parte Mehmet* [1977] 2 All ER 602; [1977] 1 WLR 795, QBD (refd)
Raja Abdul Malek Muzaffar Shah bin Raja Shahruzzaman v Setiausaha Suruhanjaya Pasukan Polis & Ors [1995] 1 MLJ 308, CA (refd)
Yusof bin Sudin v Suruhanjaya Perkhidmatan Polis & Anor [2011] 5 MLJ 465;
E [2012] 1 CLJ 448, FC (refd)
Zainal bin Hashim v Government of Malaysia [1979] 2 MLJ 276, PC (refd)

Legislation referred to

Federal Constitution arts 132(1)(c), (1)(f), 135(2), 144(5A), (5B), (5B)(i),
F (5B)(ii)
Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980 O 26(5)
Public Officers (Conduct and Discipline) Regulations 1993 regs 4(2)(d), (2)(g), (2)(i), (2)(1), 25(1), 28, 37, 37(2)(a), 38
G Public Services Disciplinary Board Regulations 1993 regs 2(1), 3(1), 5(1), 12, 12(1), 13, 14, Schedule

Appeal from: Civil Appeal No P-01(A)-165–05 of 2016 (Court of Appeal, Putrajaya)

H *MM Athimulan (Athimulan & Co) for the appellant.*
Shamsul Bolhassan (Maisarah Juhari with him) (Senior Federal Counsel, Attorney General's Chambers) for the respondent.

Ramly Ali FCJ (delivering judgment of the court):

I

INTRODUCTION

[1] This is an appeal by the appellant, Vijayarao a/l Sepermaniam, against the decision of the Court of Appeal dismissing his appeal and affirming the

decision of the High Court whereby his application for judicial review against the decision of the respondent was dismissed. For the purpose of this judgement, the respondent will be referred to as the PSC.

[2] In his judicial review application, the appellant was seeking, inter alia, for an order of certiorari to quash the decision of the PSC in dismissing him from his service at the Malaysian Anti-Corruption Commission ('MACC') and for a declaration that his dismissal from the public service was unlawful, unconstitutional and void.

[3] The High Court dismissed his application with costs. The appellant then appealed to the Court of Appeal. The Court of Appeal unanimously dismissed the appeal.

[4] Leave to appeal to this court was granted on 19 June 2017 on the following questions:

(a) whether the appellant had the constitutional right to appeal to the Appeal Board against the decision of the PSC under art 144(5B)(ii) of the Federal Constitution? ('question 1'); and

(b) whether in view of art 132(1)(c) of the Federal Constitution, the appellant ought not to be dismissed from public service without being given a reasonable opportunity of being heard which includes the right of appeal as provided by art 144(5B)(ii) of the Federal Constitution? and reg 14 of the Public Services and Disciplinary Board Regulation 1933 ('question 2').

BACKGROUND FACTS

[5] The appellant was an investigating officer (*Gred* P44) of the MACC. On 6 August 2012, the secretary of the PSC wrote to the appellant informing him that the PSC had received a report to the effect that the appellant had committed disciplinary offences. The appellant was also informed of the PSC's decision to institute disciplinary proceedings against him under reg 37 of the Public Officers (Conduct and Discipline) Regulations 1993 (PU(A) 395) ('the POCD Regulations').

[6] In the same letter, the PSC framed five charges against the appellant and consequently the appellant was requested to show cause and to make representation as to why disciplinary proceedings should not be taken against him and why he should not be dismissed or reduced in rank. Briefly, the essence of the five charges related to issues of irresponsibility and insubordination under reg 4(2)(g) and (i) of the POCD Regulations; and a conduct that would bring the public service into disrepute under reg 4(2)(d) of the same

Regulations.

[7] The appellant was given 21 days from the date of the said letter to make representation in writing to the PSC stating the grounds on which he wished to rely to exculpate himself on the charges against him ('yang mengandungi alasan-alasan yang tuan hendak gunakan untuk membebaskan diri tuan').

[8] The appellant, on 3 September 2012, replied to the show-cause letter. In his 28 page letter, the appellant categorically denied all the five charges against him. In defending himself, he gave an elaborate representation on each charge. The appellant requested for relevant documents that formed the subject matter of the charges against him to be supplied to him. The appellant also requested that he be accorded an oral hearing to enable him to make appropriate representations on each charge. However, the requests were not entertained by the PSC. In fact, there was no reply at all from the PSC to those requests.

[9] On 12 February 2014, the appellant was notified by the PSC that after considering all documents and the representations made by him, he was found guilty on all the charges and consequently he was dismissed from service with effect from 27 January 2014. It was also stated in the said letter that the decision of the PSC was final.

[10] The appellant then filed the present application for judicial review at the High Court at Penang, for an order of certiorari to quash the decision of the PSC and to declare that his dismissal from the public service was unlawful, unconstitutional, void and inoperative and that an account be taken of the salary and emoluments due to him from the date of such wrongful dismissal.

[11] The learned judge dismissed the appellant's application on the ground that there was no merit in the application. On appeal, the Court of Appeal dismissed the appeal. Hence, the present appeal before us.

AT THE HIGH COURT

[12] At the High Court, the appellant contended that he was denied of his right to an oral hearing under art 135(2) of the Federal Constitution, right to documents, and right to appeal to the Appeal Board.

[13] On the issue of the right to be heard accorded by art 135(2) of the Federal Constitution, the learned judge ruled, inter alia:

> In so far as the right to be heard accorded by art 135(2) of the Federal Constitution is concerned, it does not mean that the applicant must be heard orally. Whether a person is to be given oral hearing or not depends on the facts of each case. But

generally, the absence of an oral hearing does not amount to a denial of natural justice; see *Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v Utra Badi a/l K Perumal* [2001] 2 MLJ 417; [2001] 2 CLJ 525. In the instant case, I find the applicant was given the right to be heard when he had given his written representation. His lengthy explanation shows he understood the charges. The respondent was satisfied with his written representation. They don't require clarification by way of oral hearing. As such, the applicant's contention that he must be given oral hearing is without merit and must fail.

[14] On the issue of right to documents, the learned judge ruled, inter alia:

With regard to the appellant's contention that he ought to be given documents and records for him to prepare a defence, this court finds such contention is baseless. The facts show, without the said documents, the applicant was able to give a lengthy written representation to exculpate himself. Hence, he does not require any additional facts or document to put up his defence or representation.

The learned judge concluded that 'on the facts and circumstances of the case, the applicant is not entitled to be given the reports and documents he had asked for'.

[15] On the right to appeal to the Appeal Board, the learned judge ruled, inter alia:

Finally, the applicant's contention that he was denied the right to appeal is rebutted by the letter dated 12 February 2014 issued by the respondent which states the decision of the respondent is final. The word 'final' meant the decision could not be challenged or appealable by the applicant.

[16] The learned judge concluded her judgment in the following words:

The respondent as the disciplinary tribunal has the power to make such an order, if after taking into account the nature of the offence committed and the applicant's representation, the respondent comes to a conclusion that the appropriate punishment to be imposed on the applicant is dismissal. That decision must be given its effect. It is not for this court to interfere, especially when the affidavit evidence show the disciplinary action was carried out in compliance with its procedural rules. For the aforesaid grounds, I dismiss the application with cost.

AT THE COURT OF APPEAL

[17] Aggrieved with the decision of the High Court, the appellant appealed to the Court of Appeal. The Court of Appeal unanimously dismissed the appeal. On the issue of right to an oral hearing, the Court of Appeal had considered the following decisions of this court, namely: *Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v Utra Badi a/l K Perumal* [2001] 2 MLJ 417; [2001] 2 CLJ 525; *Public Services Commission*

Malaysia & Anor v Vickneswary a/p RM Santhivelu (substituting M Senthivelu a/l R Marimuthu, deceased) [2008] 6 MLJ 1; [2008] 6 CLJ 573; *Yusof bin Sudin v Suruhanjaya Perkhidmatan Polis & Anor* [2011] 5 MLJ 465; [2012] 1 CLJ 448; *Kerajaan Malaysia & Ors v Tay Chai Huat* [2012] 3 MLJ 149; [2012] 3 CLJ 577; and *Mat Ghaffar bin Baba v Ketua Polis Negara & Anor* [2008] 2 MLJ 1; [2008] 1 CLJ 773.

[18] The Court of Appeal summarised the key principles on the issue of right to an oral hearing as follows:

> In our view, the key principles distilled from the aforesaid decisions of the apex court may be briefly stated as follows:
>
> (a) the right to be heard does not mean the right to be heard orally. What it means is that the public officer concerned should be given a full opportunity of stating his case;
>
> (b) an oral hearing may be given in instances where the disciplinary authority considers that the case against the public officer requires further clarification;
>
> (c) where there is a request by the public officer for an oral hearing after he has denied all the charges and appears to have exculpated himself by furnishing credible evidence in his representation letter, the officer should be afforded an oral hearing;
>
> (d) an oral hearing should be granted when there is a request and when the disciplinary authority is faced with two sets of facts, documents and evidence; and
>
> (e) all the circumstances of each case must be fully considered before the court could come to the conclusion whether or not the right to an oral hearing has been properly observed by the disciplinary authority.

[19] Applying the above principles, the Court of Appeal made the following conclusion:

> It is patently clear from the above that what the appellant tried to do was to explain and justify his action and omissions. He proffered his own interpretation and understanding of the regulations and directives in question. The appellant has not disputed the facts which form the subject matter of the charges. As such, this case does not involve two sets of facts and documents. We have carefully scrutinised the appeal records and are constrained to hold that the appellant has not exculpated himself by furnishing credible evidence in his representation letter. In all the circumstances, we are bound to hold that the appellant knew the charges which were made against him, the evidence which has been given and the statements affecting him. He had been given a fair opportunity to correct or contradict them. In short, the appellant had been given the full opportunity of stating his case.

In its concluding remarks, the Court of Appeal reiterated that: 'Having

carefully considered the circumstances surrounding this case, we are of the view that the right to an oral hearing was properly observed by the PSC'. A

[20] On the issue of right to documents, the Court of Appeal having considered the following authorities, namely: *B Surinder Singh Kanda v The Government of the Federation of Malaya* [1962] 1 MLJ 169 (PC); and *Mohd Zulhazi Mohd Zulkafli v Suruhanjaya Pasukan Polis Diraja Malaysia & Anor* [2015] 2 MLJ 88 (CA); summarised the general principles as follows: B

(a) concomitant with the right to be heard is the right of a person to know the case made against him; C

(b) he must know what evidence has been given and what statements have been made affecting him; and

(c) he must be given a fair opportunity to correct or contradict them. D

[21] In the upshot the Court of Appeal made the following conclusion on this issue:

> The appellant was charged for being irresponsible and insubordinate under reg 4(2)(g) and (i) of the POCD Regulations under the first, third, fourth and fifth charges and for conducting himself in such a manner as to bring the public service into disrepute under reg 4(2)(d) under the second charge. We have perused the five charges in question and we agree that the subject matter of the charges relate to (i) Perintah Tetap Ketua Persuruhjaya SPRM Bab F (Perisikan) No 1/2010, Arahan Pengarah Bahagian Operasi Khas dated 14 January 2011 and newspaper reports in the *Berita Harian* and *Utusan Malaysia* dated 21 September 2011 and 8 October 2011. The newspapers articles in question are known to the appellant as the relevant extracts therefrom are reproduced in the second charge. The appellant's claim of ignorance of the Arahan Pengarah Bahagian Operasi Khas dated 14 January 2011 is of no avail because as an officer of the MACC he is deemed to know the rules and regulations which govern him (*Abdul Aziz bin Mohd Alias v Timbalan Ketua Polis Negara, Malaysia & Anor*. The other documents relate to the then on-going police investigations against the appellant and are confidential papers which are not accessible to the appellant. We have also perused the appellant's representation letter; we note that he has given detailed and comprehensive answers and explanations for all the five charges. As such, we do not agree that he was not given a fair opportunity to correct or contradict them. E F G H

[22] On the right to appeal to the Appeal Board, the Court of Appeal found that 'the disciplinary action to which the appellant was subjected to with a view to dismissal or reduction in rank is not one which is appealable under the Disciplinary Board (DB) Regulations'. The Court of Appeal ruled: I

> In the first place, it must be noted that the DB is a body established under sub-reg 2(1) of the DB Regulations. Sub-regulation 3(1) thereof stipulates that the jurisdiction of the DB relates to the conduct and discipline of officers under the

Managerial and Professional Group. Sub-regulation 3(3) further provides that the DB shall have jurisdiction as specified in column 3 of the Schedule. Column 3 of the Schedule refers to 'Disciplinary action not with a view to dismissal or reductions in rank'.

In other words, the jurisdiction of the DB in respect of staff falling under the Managerial and Professional Group is limited to disciplinary action not with a view to dismissal or reduction in rank. It follows that if the disciplinary action is one with a view to dismissal or reduction in rank, as in the present case, then the DB is not seized with the jurisdiction. Consequently, the appellant is not eligible to lodge an appeal against the decision of the PSC to the DB. The appellant's argument that he has been denied his right of appeal is misconceived in law and in fact and is without merit. There was no misdirection by the learned judge in this regard.

AT THE FEDERAL COURT

[23] We shall now deal with question 1.

[24] Question 1 relates to the issue of whether the appellant has the right to appeal to the Appeal Board against the decision of the PSC under art 144(5B)(ii) of the Federal Constitution.

SUBMISSION BY SENIOR FEDERAL COUNSEL ('SFC')

[25] Learned SFC, acting for and on behalf of the PSC, submitted that the relevant regulations for disciplinary appeals to the Disciplinary Appeal Board ie the Public Services Disciplinary Board Regulations 1993 ('the PSDB Regulations') and the POCD Regulations did not provide for an avenue for the appellant to appeal to the Appeal Disciplinary Board as the disciplinary proceeding taken against him was not within the purview of reg 2(1) of the PSDB Regulations. This is because at the time the disciplinary proceeding was taken against him, he was an officer in the managerial and professional group and the disciplinary proceeding was with a view to dismissal or reduction in rank.

[26] It was further submitted that the right to appeal to the Disciplinary Appeal Board cannot be afforded to the appellant as the PSC had no right, obligation or duty under the PSDB Regulations to receive, hear, consider and decide on any appeal which arose from the decision of the PSC itself. The relevant regulations provided the enabling power and jurisdiction for the PSC itself to dismiss officers in the managerial and professional group in a disciplinary action for misconduct with a view to dismissal or reduction in rank.

[27] Learned SFC contended that the appellant was never denied the right to appeal by the PSC, because there was no such avenue available after the PSC

had made a decision to dismiss him from public service. To the learned SFC, the only avenue left for the appellant if he was aggrieved with the decision of the PSC was for him to make an application to the High Court for judicial review. Therefore, the appellant's allegation that he was denied his constitutional right to appeal to the Appeal Board was frivolous and that the decision made by the PSC in this matter was in fact final based upon the existing relevant provisions of the law and regulations.

SUBMISSION BY APPELLANT'S COUNSEL

[28] Learned counsel submitted that proceedings with regard to dismissal or reduction in rank involving a member of the general public service (as listed in art 132(1)(c) of the the Federal Constitution) must be carried out by a board appointed by the Yang di Pertuan Agong under art 144(5B)(i) of the Federal Constitution, but not by the PSC. In the present case, the appellant was dismissed by the PSC. Therefore, the PSC had not acted properly and within its jurisdiction. The constitutional power on matters of conduct and discipline did not rest in the PSC anymore. The act of the PSC was ultra-vires the constitutional provisions, and therefore the validity and effect of the dismissal itself is open to question. The disciplinary authority was the Public Services Disciplinary Board and therefore by virtue of art 144(5B)(ii) of the Federal Constitution, the PSC was precluded from acting as it purported to do in the present case against the appellant.

[29] Learned counsel further submitted that the appellant was denied the right of appeal to the Public Services Disciplinary Board; and this contravenes the provisions of art 144(5B)(ii) of the Federal Constitution which reads:

> Any person aggrieved by the exercise of the board of any aforesaid powers or functions may appeal to an Appeal Board appointed by the Yang Di Pertuan Agong

[30] Learned counsel contended that the appellant had the constitutional right to appeal to an appeal board against the decision of the PSC under art 144(5B) of the Federal Constitution, which appeal procedure was contained in regs 3(1) and 14 of the Public Services Disciplinary Board Regulations 1993.

[31] On that ground, learned counsel submitted that the denial of the constitutional right to appeal to the Appeal Board, invalidated the dismissal action by the PSC on the appellant. Therefore, the Court of Appeal was wrong in law when it ruled that the appellant was not eligible to lodge an appeal against the decision of the PSC to the Appeal Board.

A OUR DECISION ON QUESTION 1

[32] Article 144(5B)(ii) of the Federal Constitution relates to the right to appeal to an appeal board by a person who is aggrieved by the exercise of powers or functions by the board appointed by the Yang di-Pertuan Agong under B cl (5B)(i) of the same Article.

[33] Clause (5B)(i) reads:

> Notwithstanding the provisions of Clause (1) of Article 135 and Article 139 and C Article 141A, all the powers and functions of the Public Services Commission or the Education Service Commission established under Article 139 and Article 141A, other than the power of first appointment to the permanent or pensionable establishment, may be exercised by a board appointed by the Yang di-Pertuan Agong.

D

[34] Clause (5B)(ii) reads:

> (ii) Any person aggrieved by the exercise by the board of any of the aforesaid powers or functions may appeal to an Appeal Board appointed by the Yang di-Pertuan Agong.

E

[35] In the exercise of the powers conferred by cl (5B)(i) above, the Yang di-Pertuan Agong made the PSDB Regulations which came into force on 15 December 1993. The Public Services Disciplinary Board was established F under reg 2(1) of the PSDB Regulations. Under reg 3(1) of the same Regulations, the Disciplinary Board has jurisdiction in matters relating to the conduct and discipline of all persons specified in Column 2 of the Schedule who are members of the services mentioned in paras (c) and (f) of art 132(1) of the Federal Constitution.

G

[36] Paragraph (c) of art 132(1) refers to the general public service of the Federation. The appellant in the present appeal was in this category.

[37] The jurisdictions of the Disciplinary Board are found in Column 3 of H the Schedule to the PSDB Regulations. In Column 3, except for the Disciplinary Board for the Support Group (No 1) which provides for disciplinary action with a view to dismissal or reduction in rank, the jurisdiction over all other categories of officers only relates to disciplinary action not with a view to dismissal or reduction in rank.

I

[38] Thus, the power to dismiss or reduce in rank an officer in the top management group and the managerial and professional group can only be exercised by the PSC, the respondent in the present appeal. This is clearly provided for in reg 5(1) of the PSDB Regulations. The Disciplinary Board

established under reg 2(1) has no such power or jurisdiction to deal with such proceedings. A

[39] The Public Services Disciplinary Appeal Board (the Disciplinary Appeal Board) was established under reg 12(1) of the PSDB Regulations. Regulation 13 provides for the functions of the Disciplinary Board. It reads: B

> 13 The functions of the Disciplinary Appeal Board shall be to receive, consider and decide on any appeal made in accordance with the provisions of these Regulations with respect to any decision of the Disciplinary Board relating to the conduct and discipline of an officer in any of the services referred to in regulation 3. C

[40] Under reg 14 of the PSDB Regulations, an officer aggrieved by the decision of the Disciplinary Board established under reg 2(i) may appeal against such decision to the Disciplinary Appeal Board established under reg 12 of the PSDB Regulations. D

[41] Learned counsel for the appellant argued that the appellant's right to an appeal is provided for by art 144(5B)(ii) of the Federal Constitution; and therefore the appellant has the right to appeal against the decision of the PSC to an appeal board appointed by the Yang di-Pertuan Agong. E

[42] The disciplinary proceeding against the appellant, which resulted in his dismissal from the public service, was initiated and conducted by the PSC in its capacity as a disciplinary board by virtue of its powers under reg 5(1) of the PSDB Regulations. It has the necessary jurisdiction to do so. There is nothing improper in law. This is because the PSC is the only body or authority empowered to deal with matters involving disciplinary proceedings against an officer in the managerial and professional group with a view to dismissal or reduction in rank. There is no avenue for appeal provided for in the PSDB Regulations. If the appellant is aggrieved with the decision of the PSC in dismissing him, he has the liberty to apply for judicial review at the High Court as what had been done in the present case. F G

[43] To conclude on this issue, we agree with the submission of learned SFC that the reliance by the appellant solely on art 144(5B)(ii) of the Federal Constitution is not correct. It was based on a miscontrued interpretation of that provision. We are of the view that the appellant was never denied the right to appeal in the present case as the powers and functions provided for under art 144(5A) and (5B) of the Federal Constitution read together with the provisions of and Schedule to the PSDB Regulations did not provide for such powers, to receive, hear, consider and decide on any appeal. Therefore we answer question 1 in the negative, ie that on the facts of the present case, the appellant had no constitutional right to appeal to the Appeal Board against the decision of the PSC under art 144(5B)(ii) of the Federal Constitution. H I

A QUESTION 2

[44] We shall now deal with question 2.

B **[45]** In essence, question 2 relates to the right of the appellant to be given a reasonable opportunity of being heard in the disciplinary proceedings against him which resulted in him being dismissed from the public service by the PSC.

[46] On this issue, the appellant complained that the PSC had failed or C refused to afford him an oral hearing despite a specific written request having been made by him after he had denied all the charges and had furnished credible evidence in his representation letter to exculpate himself; and that such failure was against the constitutional requirement of art 135(2) of the Federal Constitution and thus afforded a good ground to allow the appellant's appeal.

D SUBMISSION BY THE APPELLANT'S COUNSEL

[47] Learned counsel contended that the appellant was not given a reasonable opportunity of being heard in the disciplinary proceeding against E him. In this case, the appellant had never pleaded guilty to any of the charges against him. He had given explanation to the PSC for each and every charge and disputed the facts therein. The PSC had not contradicted or clarified anything on the appellant's statement in his written representations. The appellant had specifically requested for an oral hearing in his written F representation to enable him to adduce further evidence. He also demanded documents and reports relied on by the disciplinary authority to be supplied to him to enable him to make representations in the oral hearing. The PSC did not even respond to the request and demand.

G **[48]** Learned counsel further argued that the right of the appellant to an oral hearing to the appellant, was a right to the minimum standard of procedural fairness, and in carrying out the disciplinary procedure, natural justice demanded that the disciplinary authority must employ means that justify the end rather than using the end to justify the means.

H

[49] Learned counsel cited decisions of this court on this issue in *Yusof bin Sudin*, *Tay Chai Huat*, *Chai Kok Choi v Ketua Polis Negara & Ors* [2008] 1 MLJ 725 and *Vickneswary* to support his contention that when there was a request made by a public officer involved in a disciplinary proceedings for an oral I hearing after he had denied all the charges and appeared to have exculpated himself by furnishing credible evidence in his representation letter, then by virtue of O 26(5) of the General Orders 1980 the officer should be afforded such an oral hearing to satisfy the requirement of art 135(2) of the Federal Constitution.

[50] Learned counsel concluded his submission by stressing that there had been a clear breach of natural justice in the disciplinary proceedings. This contravened art 135(2) of the Federal Constitution and that rendered the disciplinary proceedings, against the appellant, null and void, and consequently, the appellant ought not to be dismissed from his service.

SUBMISSION BY SFC FOR THE PSC

[51] On behalf of the PSC, learned SFC submitted that the procedure adopted by the disciplinary authority in the present case has complied strictly with the POCD Regulations and the PSDB Regulations. The appellant was issued with the show-cause letter notifying the nature of accusations and the possible punishments under reg 37(2)(a) read with reg 38 of the POCD Regulations. He was invited to make a written representation within 21 days, which he did. It was only after the disciplinary authority was satisfied that the written representation did not exculpate him on the said charges that the disciplinary authority decided to dismiss him form the public service. The procedure in reg 37 of the POCD Regulations was followed by the PSC.

[52] It was also submitted that the appellant was not denied of his constitutional right of being heard under art 135(2) of the Federal Constitution as he had been given an opportunity to state his case in his written representation.

[53] Learned SFC argued that 'the right to be heard'as enshrined in art 135(2) of the Federal Constitution did not mean the right to be heard orally. What it means is that the officer concerned should be given full opportunity of stating his case. To support her contention, learned SFC relied on an earlier decision of this court in *Utra Badi*. In the present case, the appellant had been given a reasonable opportunity of being heard and had a full opportunity to state his case on all the charges proffered against him even without affording him an oral hearing. Therefore, the appellant's complaint on this issue has no basis at all and his appeal herein ought to be dismissed.

[54] Learned SFC also cited other authorities, namely: *Nordin Hj Zakaria (Timbalan Ketua Polis Kelantan) & Anor v Mohd Noor Abdullah* [2011] MLJU 760; [2004] 2 CLJ 777; and *Ghazi bin Mohd Sawi v Mohd Haniff bin Omar, Ketua Polis Negara, Malaysia & Anor* [1994] 2 MLJ 114; [1994] 2 CLJ 333 to support her submissions.

OUR DECISION ON QUESTION 2

[55] The central point for consideration relating to question 2, revolves on the issue of 'right to be heard'. In the present appeal, the appellant was asked to

make his representations in writing and to show cause as to why disciplinary action could not be taken against him with the view to dismissal or reduction in rank. He submitted his written representations within the time given by the PSC. His complaint was that he was not given the right or opportunity to be heard orally which he had requested for in his written representation. The PSC had not responded to his request until he was notified of his dismissal from his service.

[56] We shall now deal with the issue of the right to be heard in general first. In our view, the right to be heard is an important pillar of natural justice. It is a right to the minimum standard of procedural fairness. In carrying out the disciplinary procedure, natural justice requires that the disciplinary authority must afford the right to be heard to the officer directly affected by it. It applies to every case where an individual is adversely affected in a proceeding involving an administrative action (see: *Ketua Pengarah Kastam v Ho Kwan Seng* [1977] 2 MLJ 152; [1975] 1 LNS 72).

[57] The general rule of the right to be heard more popularly known by its Latin version of as 'audi alteram partem' (hear the other side), requires that a disciplinary decision be the person directly affected by given a fair opportunity both to state his case and to know and answer the case of the other side; otherwise the disciplinary decision cannot stand. Any decision reached in contravention of this rule will be void for being ultra vires art 135(2) of the Federal Constitution.

[58] Article 135(2) of the Federal Constitution provides: 'No member of such a service as aforesaid shall be dismissed or reduced in rank without being given a reasonable opportunity of being heard'. The same right was replicated in reg 25(1) of the POCD Regulations as follows: 'Subject to the provisions of subregulation (2) no officer shall be dismissed or reduced in rank in any disciplinary proceedings under this part unless he has been informed in writing of the grounds on which it is proposed to take action against him and has been afforded a reasonable opportunity of being heard'. Regulation 28 of the POCD Regulations sets out the procedure to be followed in disciplinary proceedings with a view of dismissal or reduction in rank.

[59] What amounts to a reasonable opportunity to be heard under art 135(2) of the Federal Constitution must be determined by the nature of the matter in issue. Arifin Zakaria CJ in *Tay Chai Huat* had expressed his observation that '... if the right to be heard under art 135(2) is to have any real meaning, the circumstances of each case must be fully considered before the court could come to the conclusion whether or not such right has been properly observed by the disciplinary authority'.

[60] The importance of this rule was earlier expressed by Lord Denning in *B Surinder Singh Kanda* where His Lordship said: A

> If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him; and then he must be given a fair opportunity to correct or contradict them. This appears in all the cases from the celebrated judgment of Lord Loreburn, LC in *Board of Education v Rice* (a) down to the decision of Their Lordships' Board in *Ceylon University v Fernando* (4). It follows, of course, that the judge or whoever has to adjudicate must not hear evidence or receive representations from one side behind the back of the other. The court will not enquire whether the evidence or representations did work to his prejudice. Sufficient that they might do so. The court will not go into the likelihood of prejudice. The risk of it is enough. B C

[61] The issue before us now is whether the words 'opportunity of being heard' connotes an oral hearing. D

[62] This court in *Utra Badi* had held that 'the right to be heard given by art 135(2) of the Federal Constitution does not require that the person concerned be given an oral hearing and it could not be argued that the failure to give an appellant an oral hearing was a denial of justice … what is important is that the officer concerned should have a full opportunity of stating his case before he is dismissed' (see also: *Najar Singh v Government of Malaysia & Anor* [1974] 1 MLJ 138; and *Zainal bin Hashim v Government of Malaysia* [1979] 2 MLJ 276). E F

[63] In the case of *Vickneswary*, this court had held to the effect that the disciplinary authority ought not to have granted the officer concerned an opportunity to be heard orally. It was also ruled in that case that in deciding whether to refer the matter to the committee of inquiry, the disciplinary authority would have to consider the written representation of the officer ie whether his written representation exculpated himself from the charges preferred against him. G

[64] In short, both decisions in *Utra Badi* and *Vickneswary* affirmed the rule that the right to be heard under art 135(2) of the Federal Constitution did not require the officer concerned be given an oral hearing. H

[65] However, this court in *Utra Badi* in deciding that the right to be heard under art 135(2) of the Federal Constitution did not connote an oral hearing, did mention that 'what is important is that the officer concerned should have a full opportunity of stating his case before he is dismissed'. I

[66] Depending on the facts and circumstances of each case, a full

opportunity of stating the officer's case before his dismissal may be by way of written representations only; or both written as well as oral representations; or oral representations only. Article 135(2) of the Federal Constitution does not expressly provide whether it should be by way of written representations only or oral hearing only or both.

[67] As stated earlier the right to be heard is a basic right giving a party an opportunity to give explanation against an accusation or evidence against him. Some of these may by their very nature be adequately dealt with by way of a written representation; some can only be effectively conveyed by way of an oral hearing where witnesses can be called and cross-examined to determine the truth of certain allegations made against the officer concerned.

[68] This court in *Chai Kok Choi* had, inter alia, stated that an oral hearing might have been necessary if the officer concerned had not admitted committing the offence he was charged with; but if the officer had admitted the offence in reply to the show-cause letter, then oral hearing would no longer be necessary. Cases may arise where, in the light of peculiar facts, an oral hearing is necessary and appropriate and the failure or refusal to afford such an oral hearing may result in the officer being prejudiced and the decision arrived at being declared a nullity or quashed (see also: *Raja Abdul Malek Muzaffar Shah bin Raja Shahruzzaman v Setiausaha Suruhanjaya Pasukan Polis & Ors* [1995] 1 MLJ 308 (CA)).

[69] Zulkefli FCJ (now PCA) in *Yusof bin Sudin* was of the view that the principle in *Utra Badi* that the refusal to afford an officer an oral hearing in a disciplinary proceedings was not contrary to law, was a general principle and restricted to its own facts. His Lordship said:

> It is my view that the principle in *Utra Badi*'s case is a general principle and restricted to its own facts. It does not cover situation where the officer in his representation letter gives an exculpatory statement and make a special request for an oral hearing under the said General Orders 1980. In such a situation this court is in a position to review and extend the general principle in the case of *Utra Badi* by stating the exception to this general rule.

[70] In that case (*Yusof bin Sudin*), the majority decision held that 'when there was a request by the public officer for an oral hearing after he had denied all the charges against him by furnishing credible evidence in his representation letter, then by virtue of General Order 26(5) of the 1980 (GO), the officer should be afforded an oral hearing to satisfy the requirement of art 135(2) of the Federal Constitution which states that a reasonable opportunity of being heard be given before any member of such a service was dismissed or reduced in rank'.

[71] In short, 'a reasonable opportunity of being heard' or 'a right to be heard' as required under art 135(2) of the Federal Constitution may include an oral hearing, particularly when the officer concerned had requested for it after he had denied all the charges and he seemed to have exculpated himself of the charges against him.

[72] In allowing the appeal by the officer concerned in *Yusof bin Sudin*, Zulkefli FCJ had distinguished the factual circumstances and the issues for determination in *Ultra Badi* with that case, inter alia, as follows:

(a) in *Utra Badi*, the issue for determination was not a request by the public officer to be given a right of an oral hearing in the disciplinary proceedings itself but a request to be given the right of an oral hearing for mitigation only before punishment was meted out;

(b) in *Utra Badi*, there was no specific request made by the public officer for an oral enquiry;

(c) *Utra Badi*'s case dealt with a general principle that was restricted to its own facts; it did not cover a situation where the officer in his representation letter had given an exculpatory statement and also made a special request for an oral hearing in the proceedings; in such a situation, this court is in a position to review and extend the general principle in *Utra Badi* by stating the exception to this general rule;

(d) the court should distinguish *Utra Badi*'s case which stated that the right to be heard given by art 135(2) of the Federal Constitution did not require the person concerned to be given an oral hearing, by recognising the fact that there were exceptions to this general rule;

(e) if such exceptions were not recognised by the courts then the principle in *Utra Badi* might lead to the disciplinary authority exercising its discretion arbitrarily by simply refusing to call for an enquiry or oral hearing for further clarification although the officer concerned may have furnished sufficient evidence to exculpate himself;

(f) it was found that the charges framed against the officer (in that case) were general in nature and lacking in particulars; and

(g) after considering the serious charges leveled against the officer in that case it was then found that the disciplinary proceedings taken against him were null and void and that in all fairness he ought to have been given an oral hearing as he had requested so as to enable him to make an effective and meaningful defence to the charges.

[73] The issue of request for an oral hearing had been restressed by this court in a more recent case of *Tay Chai Huat* where Arifin Zakaria CJ, made the following observation:

A [1] ... I agree that the appeal should be allowed on the premise that there was no request from the respondent for the appointment of Committee of Inquiry under Order 26(5) of the General Orders 1980. As such, the disciplinary board should not be faulted for failing to do so. I would, therefore, allow this appeal on that narrow ground.

B [2] I should also add that the facts in the present case can be distinguished from that of *Mat Ghaffar Baba v Ketua Polis Negara & Anor* [2008] 2 MLJ 1; [2008] 1 CLJ 773. In that case, there was a request made by the appellant to the disciplinary authority to cross-examine the persons named in the charges proffered against him and for certain documentary C evidence to be made available to him, which was denied. Similarly, in the case of *Yusof bin Sudin v Suruhanjaya Perkhidmatan Polis & Anor* [2011] 5 MLJ 465; [2012] 1 CLJ 448. In that case, the appellant explicitly requested for an oral hearing for the reasons stated in his letter. In both these cases, it was held that in the circumstances of the case, an oral hearing ought to have been granted. The above authorities affirmed that if D the right to be heard under art 135(2) is to have a real meaning, the circumstances in each case must be fully considered before the court could come to the conclusion whether or not such right has been properly observed by the disciplinary authority (see also: *B Surinder Singh Kanda v The Government of the Federation of Malay* [1962] MLJ 169*).*

E [3] In the present case, the respondent did not at any stage request for an oral hearing or for any document to be furnished to him. Therefore, he could not complain that such right was not afforded to him. It is for him to request for an oral hearing or for any document that he thinks could help him to prepare his answer to the charges levelled against him. In *Mat* F *Ghaffar Baba* and *Yusof bin Sudin*, a request for oral hearing was made by the officers concerned, but was denied. The courts held that such refusal was unreasonable in the circumstances of the case and the courts went on to hold that the officers, in the circumstances, had not been afforded the right of hearing in its proper sense. On this ground, the decisions of the G disciplinary authority were quashed.

[74] In the above passages in *Tay Chai Huat*, this court had in effect, recognised the principle that an oral hearing need to be afforded and related documents need to be supplied to the officer facing disciplinary proceedings if H the officer concerned had requested for it from the disciplinary authority. However, in that case, judgment was not in the officer's favour because the court found that he had not at any stage of the proceedings requested for an oral hearing or for any document to be furnished to him.

I **[75]** Another case to be considered is the Court of Appeal's decision in *Ghaffar Baba* where the Court of Appeal had the occasion to deal with a claim made by an officer in the police force that he was denied the right for an oral hearing at the disciplinary proceedings despite the fact that he had expressly requested for it. The Court of Appeal allowed his appeal. Arifin Zakaria JCA

(later CJ) in delivering judgment of the court, ruled as follows:

> In the circumstances, after considering the charges levelled against the plaintiff, the court was of the view that in all fairness the plaintiff ought to have been given an oral hearing as requested by him. Similarly documentary and other evidence purportedly relied upon by the first defendant in arriving at his finding ought to have been made available to him to enable the plaintiff to make an effective and meaningful defense to the charges. In the circumstances the court held that there had been a clear breach of the rules of natural justice as embodied in art 135(2) of the Federal Constitution which rendered the disciplinary proceedings null and void.

[76] That case was cited with approval by this court in *Tay Chai Huat*.

[77] On the same issue, Gopal Sri Ram JCA, in the case of *Raja Abdul Malek Muzaffar Shah* said that 'cases may arise where in the light of peculiar facts, the failure to afford an oral hearing may result in the decision arrived at being declared a nullity or quashed' (see: *R v Immigration Appeal Tribunal, ex parte Mehmet* [1977] 2 All ER 602; [1977] 1 WLR 795).

[78] Another case which turned on a similar issue is the case of *Ang Seng Wan v Suruhanjaya Polis Di Raja Malaysia & Anor* [2002] 2 MLJ 131. In that case a police officer was dismissed from service by the disciplinary authority without giving him an opportunity for an oral hearing and also without supplying him with the usual reports and statements of witnesses. The Court of Appeal ruled that, having considered the charges and the representation made by the officer, the officer ought to have been afforded an oral hearing; and failure to do so constituted a breach of the procedural fairness and thus vitiating the proceedings before the disciplinary authority. The appeal in that case was allowed and the officer was reinstated in the police force.

[79] From the authorities referred to above, we are of the considered view that the law as currently adopted by the courts is more inclined in favour of affording a right to be heard orally to an officer facing disciplinary proceedings if there is a request made by him to the disciplinary authority. As correctly expressed by Richard Malanjum CJ (Sabah and Sarawak) in *Yusof bin Sudin*: 'Accordingly I agree with my learned brother Zulkefli bin Ahmad Makinudin FCJ that 'when there is a request by the public officer for an oral hearing after he had denied all the charges and appears to have exculpated himself by furnishing credible evidence in his representation letter, then by virtue of Order 26(5) of the General Orders 1980, the officer should be afforded an oral hearing to satisfy the requirement of art 135(2) of the Federal Constitution ...'. And like my learned brother I too allow this appeal and grant the relief as given by him'.

[80] The situation might be different if the officer concerned despite having made specific request for an oral hearing or enquiry to be held had admitted the disciplinary offences against him as disclosed in the charges but gave the reasons or circumtances for their commission. This was what happened in *Gnanasekaran a/l Krishnasamy v Suruhanjaya Perkhidmatan Awam, Malaysia & Anor* [2010] 6 MLJ 441; [2011] 2 AMR 765, where this court dismissed the officer's appeal against his dismissal from the public service despite the fact that he had made specific request for an oral hearing but at the same time had admitted to the offences charged against him and had sought for forgiveness and undertook not to repeat the offences in future.

[81] In the present case, the appellant had also complained that he was not given any document at all by the PSC notwithstanding that specific request was made for those relevant documents including the reports that were relied upon by the PSC in finding that a prima facie case had been proved against him. The PSC had admitted using the reports in deciding that a prima facie case was proved against the appellant. Learned counsel for the appellant submitted that the Court of Appeal was plainly wrong in saying that non-supply of the documents and reports did not deprive the appellant of his right to know the case against him.

[82] The right to documents related to the disciplinary proceedings is closely linked to the right for an oral hearing. Both are important elements in fulfilling the right to be heard to be afforded to the officer concerned. We are of the view that, in view of the serious charges levelled against the appellant which ultimately had resulted in him being dismissed from the service, in all fairness, the appellant ought to have been supplied with all the relevant documents and reports requested by him particularly since the disciplinary authority had relied on those documents to decide that a prima facie case had been proved against the appellant, to enable him to make an effective and meaningful defence to the charges. There is a plethora of authorities that deal with the issue.

[83] Lord Denning in the case of *B Surinder Singh Kanda* had ruled that 'Their Lordships do not think it was correct to let him (referring to the adjudicating officer) have the report of the Board of Inquiry unless the accused also had it so as to be able to correct or contradict the statements in it to his prejudice'. His Lordship had also stressed that 'whoever has to adjudicate must not hear evidence or receive representations from one side behind the back of the other'.

[84] It is an established law that the officer concerned must be supplied with those documents which were relied upon by the disciplinary authority in the proceedings against him where the officer had requested for the documents. It is the duty of the disciplinary authority to provide him with the documents

(see: *Tay Chai Huat*; *Chai Kok Choi*; and *Raja Abdul Malek Muzaffar Shah*. No one facing a disciplinary proceedings can effectively meet the charges unless copies of the relevant statements and documents to be used against him are made available to him. Without copies of such documents, the officer concerned will not be able to prepare his defence effectively.

[85] The general principles on this issue can be summarised as follows:

(a) concomitant with the right to be heard is the right of a person to know the case made against him;

(b) he must know what evidence has been given and what statements have been made affecting him; and

(c) he must be given a fair opportunity to correct or contradict them.

[86] In the present case the appellant had made specific requests for documents and for an oral hearing to be afforded to him. In paras 3, 4, 5 and 6 of his letter of representation the appellant stated:

> 3. Sehubungan dengan itu, bagi membuat representasi dengan sempurna dan jelas, maka saya ingin memohon laporan yang diterima oleh Pengerusi Suruhanjaya Perkhidmatan Awam yang menyatakan bahawa saya, Pegawai Siasatan Gred P44, Bahagian Pengurusan Sumber Manusia dan Pentadbiran Am, Suruhanjaya Pencegahan Rasuah Malaysia (SPRM), telah berkelakuan yang melanggar tatakelakuan dan membolehkan tindakan tatatertib diambil terhadap saya. Tujuan saya memohon laporan tersebut adalah untuk mengetahui serta menjelaskan kepada YBhg Dato' dengan teliti dan jelas terhadap pertuduhan-pertuduhan yang dikenakan terhadap saya.
>
> 4. Selain itu, saya juga ingin tahu daripada Suruhanjaya Perkhidmatan Awam Malaysia samada Suruhanjaya Pencegahan Rasuah Malaysia ada menjalankan suatu inkuiri sebelum laporan terhadap saya disediakan. Sekiranya terdapat laporan inkuiri, maka dengan berbesar hati sekiranya dapat memberitahu siapa yang mengambil bahagian dalam inkuiri tersebut supaya saya dapat memberikan penjelasan serta menafikan apa-apa tohmahan dibuat oleh orang yang mengambil bahagian inkuiri tersebut.
>
> 5. Saya juga ingin memohon dan merayu kepada Suruhanjaya Perkhidmatan Awam Malaysia supaya diberi satu peluang pendengaran secara peribadi supaya saya dapat memberikan penjelasan yang jitu dan munasabah terhadap pertuduhan-pertuduhan yang dikenakan kepada saya. Justeru itu, saya juga ingin mendapatkan dokumen-dokumen yang diberikan bersama-sama dengan laporan yang dikemukakan kepada Suruhanjaya Perkhidmatan Awam Malaysia kepada saya bagi membolehkan saya memberikan penjelasan yang rapi dalam kes ini bagi membebaskan diri saya melalui representasi.
>
> 6. Saya memohon kepada Dato' supaya memberikan dokumen serta laporan supaya saya dapat memberikan satu representasi yang sempurna bagi membebaskan diri

saya. Walau bagaimanapun, saya terpaksa memberikan satu penjelasan bagi pertuduhan-pertuduhan.

[87] For every charge, the appellant gave explanation as to how the alleged offence happened and the opening sentence in his explanation he started with 'Saya menafikan pertuduhan ini dengan alasan-alasan berikut'. In his conclusion to his explanation on the charges, the appellant repeated his denial and concluded: 'Saya menafikan pertuduhan yang dikenakan kepada saya'. In short, the appellant expressly denied each and every charge made against him.

[88] The charges against the appellant were made based on a report received by the Chairman of the PSC. Paragraphs 1 and 2 of the show-cause letter state:

> Bahawa satu laporan telah diterima oleh Pengerusi Suruhanjaya Perkhidmatan Awam yang menyatakan bahawa tuan, Vijayarao a/l Sepermaniam (K/P: 780315-08-6073), Pegawai Siasatan Gred P44, Bahagian Pengurusan Sumber Manusia dan Pentadbiran Am, Suruhanjaya Pencegahan Rasuah Malaysia (SPRM), telah berkelakuan yang melanggar tatakelakuan dan membolehkan tindakan tatatertib diambil terhadap tuan.
>
> 2. Pengerusi Suruhanjaya Perkhidmatan Awam telah menimbangkan segala maklumat yang diterima berpendapat bahawa tuan patut dikenakan tindakan di bawah Peraturan 37, Peraturan-Peraturan Pegawai Pegawai Awam (Kelakuan dan Tatatertib) 1993 atas pertuduhan-pertuduhan berikut:

[89] The appellant requested for a copy of the said report to be given to him 'untuk mengetahui serta menjelaskan kepada YBhg Dato' dengan teliti dan jelas terhadap pertuduhan-pertuduhan yang dikenakan terhadap saya'. Unfortunately his request was not entertained at all and was ignored by the PSC. It is incorrect and unacceptable in law to let the PSC have and rely on those documents or reports without the appellant being given their copies of those documents and reports to prepare for his defence to the charges.

CONCLUSION

[90] For the reasons stated above, we answer question 1 in the negative in that the appellant was not entitled to nor has any right to appeal to the Appeal Board against the decision of the PSC in dismissing him from the service. The Appeal Board has no jurisdiction or powers to deal with disciplinary proceedings involving an officer (such as the appellant) who was in the managerial and professional group. If the appellant is aggrieved with the decision of the PSC in dismissing him, his avenue is to file the necessary application for judicial review at the High Court.

[91] With regard to question 2, our answer is that in the light of the facts and circumstances of this case, the appellant ought to have been given an oral

hearing and related documents and reports as requested by him in his written representation, to enable him to make an effective and meaningful defense to the charges preferred against him. The appellant in this case was denied of his requests for an oral hearing as well as for the relevant documents and reports.

[92] In view of our answer to question 2 above and for the reasons stated above we allow the appeal with costs here and the courts below and set aside the orders of the courts below. Consequently, we make the following orders:

(a) that the order of dismissal of the appellant made by the PSC is null and void and of no effect in law; and therefore is set aside;

(b) that the appellant be reinstated as an Investigating Officer Grade P44 at the Malaysian Anti-Corruption Commission (MACC); and

(c) that the Registrar of the High Court at Pulau Pinang do conduct an assessment enquiry to ascertain salary, emolument, allowances and other benefits accrued and due to the appellant which should be received from the date of dismissal until full settlement.

Appeal allowed with costs here and below; orders of courts below set aside.

Reported by Dzulqarnain Ab Fatar